

# **PROPOSED LEASE AGREEMENT**

## **STATE TRUST LAND**

### **COYOTE WIND PROJECT**

**January 19, 2010**

**Purpose:** Consideration of a long term wind energy lease located on 640 acres within Section 36, Township 1N, Range 12E, Sweet Grass County, Montana.

The DNRC proposes to lease 640 acres of state school trust land for placement of wind turbines for the production of electrical energy. The project is located eleven miles southwest of the town of Big Timber, north of Interstate 90. Eight wind turbines are proposed for construction on school trust land as part of a larger wind energy development occurring on adjacent private lands.

The state school trust land was offered for lease under a request for proposal in 2005. Coyote Wind's proposal was approved by DNRC. DNRC conducted an Environmental Impact Statement and issued a Record of Decision on December 1, 2009.

The existing grazing use will continue under license agreement with the existing lessee.

The lease agreement includes the following key terms and conditions:

**Lease area:** 640 acres

**Term:** 20 years with options to renew for a maximum term of 99 years.

**Rent:** One time installation fee equal to \$1,000.00 per megawatt in installed capacity of wind turbines payable at the commencement of operation (\$14,400.00); 3% of the gross revenues, or \$1,500.00 per year of each megawatt of installed turbine capacity, whichever is greater - minimum annual revenue \$21,600.00.

**Improvements:** Coyote Wind will be responsible for the development of all improvements necessary to conduct the purpose of the lease.

**Taxes:** Lessee will pay property taxes on improvements and the beneficial use of the land as though they owned it in fee title.

**Insurance:** Lessee is required to obtain and maintain liability, property, and worker's compensation insurance.

**Assignment:** Lessee will be allowed to assign the lease. The prospective new lessee must meet minimum qualifications.

**Financing:** The state trust land cannot be hypothecated. The lessee has the right to execute leasehold mortgages for the above ground improvements.

**Liens:** Liens may not be recorded, filed, claimed or asserted against the Premises.

The Director recommends the Board approve the issuance of attached lease agreement.

Lease Agreement  
Between  
Montana Department of Natural Resources and Conservation  
And  
Coyote Wind, LLC

3090001

January 1, 2010

**LEASE AGREEMENT**

## **LEASE AGREEMENT NO. 3090001**

### **SPECIAL LEASE OF STATE LANDS**

THIS LEASE AGREEMENT is entered into as of January 1, 2010, (the “**Effective Date**”), by and between the Montana State Board of Land Commissioners, whose address is P.O. BOX 201601 Helena, MT 59620-1601 (hereinafter referred to as “**Lessor**”), and Coyote Wind, LLC, a Montana limited liability company, whose address is c/o Enerfin Energy Company, Inc., 522 SW Fifth Avenue, Suite 1230, Portland, OR 97209 (hereinafter referred to as “**Lessee**”). Each of Lessor and Lessee are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**.”

In consideration of the rent to be paid and covenants to be performed by the Lessee, its administrators, executors and assigns, the Lessor hereby leases to the Lessee for the term stated herein the following described Property (hereinafter referred to as the “**Property**”) for the purpose described herein only, and subject to the terms, conditions and restrictions stated herein:

ALL of Section 36 within Township 1 North, Range 12 East, in Sweet Grass County, Montana, which is held in trust by the State of Montana for the benefit of Montana’s Common Public Schools.

IT IS MUTUALLY UNDERSTOOD, AGREED AND COVENANTED BY AND BETWEEN THE PARTIES AS FOLLOWS:

#### **1. LEASE; PURPOSE OF LEASE**

**1.1 Purpose of Lease.** The lease created by this Lease Agreement is solely and exclusively for wind energy purposes, and not for any other purpose, and the Lessee shall have the exclusive right to use the Property for wind energy purposes. For purposes of this Lease Agreement, “wind energy purposes” means converting wind energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto, including, without limitation: (a) determining the feasibility of wind energy conversion and other power generation on the Property, including conducting studies of wind speed, wind direction and other meteorological data, and extracting soil samples; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, wind turbines, underground electrical transmission and communications lines, electric transformers, telecommunications equipment, power generation facilities to be operated in conjunction with large wind turbine installations, roads, meteorological towers and wind measurement equipment, and related facilities and equipment (collectively referred to hereinafter as “**Wind Power Facilities**”) on the Property, provided that the Lessee shall not construct wind turbines on the Property within 300 feet as measured from the center of the wind turbine foundation to any Property boundary that is adjacent to a land owner with no agreement with the lessee as part of the wind farm; and (c) undertaking any other activities, whether accomplished by the Lessee or a third party authorized by the Lessee, that the

Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing (collectively referred to hereinafter as the “**Development Activities**”), including without limitation:

- (i) the right of ingress to and egress from Wind Power Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads identified on the preliminary site plan attached as Exhibit A (the “**Preliminary Site Plan**”), and lanes thereon if existing, or otherwise by such route or routes as Lessee may construct from time to time upon approval by the Lessor (“**Access Rights**”); and,
- (ii) Under an approval by the Lessor, which shall not be unreasonably withheld, the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Wind Power Facilities, in compliance with all applicable laws and regulations: (a) a line or lines of towers, with underground wires and cables, which wires and cables shall be buried at a minimum depth of one (1) meter for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, cross arms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Property; (b) one or more interconnection or switching facilities from which Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of a purchaser of electrical energy, together with the appropriate rights of way, on, along and in the Property (said towers, wires, cables, facilities and rights of way are hereinafter collectively referred to as the “**Transmission Facilities**”).

**1.2 Wind Non-Obstruction.** The Lessor’s activities upon the Property and any grant of rights or interests the Lessor makes to any Related Person (defined below) after the Effective Date upon the Property shall not, currently or prospectively, interfere with: (a) the construction, installation, maintenance or operation of a Project including but not limited to Wind Power Facilities or Transmission Facilities located on the Property, (b) vehicular or pedestrian access to, or the transmission of energy from, the Property, any Wind Power Facilities or the Project (defined below), (c) any wind energy purposes of Lessee or any sublessee on the Property, or (d) the undertaking of any other activities or the exercise of any other rights or benefits granted Lessee hereunder. Without limiting the generality of the foregoing, neither Lessee nor any Related Person of Owner shall interfere with: (i) the free, unobstructed and natural availability, accessibility, flow, frequency, speed or direction of air or wind over and across the Property (whether by planting trees, constructing buildings or other structures, or otherwise); (ii) the operation of wind turbine rotors that overhang the Property; (iii) the lateral or subjacent support for the Wind Power Facilities on the Property; or (iv) the output or efficiency of Lessee’s or any sublessee’s wind turbines located on the Property. Subject to the foregoing, the Lessor reserves the right to erect structures on the Property not to exceed forty (40) feet in height, provided that the Lessor provides Lessee with written notice thereof prior to the Lessor commencing construction of any new structure on the Property.

**1.2.1** As used herein, the term “**Related Person**” means any member, partner, principal, officer, director, shareholder, successor-in-interest, employee, agent, heir, representative, contractor, tenant, sublessee, grantee, licensee, invitee or permittee of a Party.

1.2.2 The term “**Project**” refers to those Wind Power Facilities and Transmission Facilities and other improvements to be constructed and operated by the Lessee on lands located in Sweet Grass County, Montana, including, in part, the Property.

## 2. **PAYMENTS TO LESSOR; AUDITS**

2.1 **Installation Fees.** The Lessee shall pay to the Lessor a one-time installation fee equal to \$1,000 per megawatt (“MW”) of installed capacity of wind turbines installed by Lessee on the Property payable within \_\_\_\_\_ days after the Operations Date.

2.2 **Pre-Commercial Operation Payments.** Within thirty (30) days after the Effective Date and upon each anniversary date of the Effective Date until the Operations Date (as defined in Section 2.4), the Lessee shall pay to the Lessor a pre-commercial operation payment in the sum of One Dollar Fifty Cents (\$1.50) per acre per year for the forthcoming twelve-month period (each, a “**Pre-Commercial Operations Payment**”).

2.3 **Operating Fees.** The Lessee shall pay to the Lessor operating fees in an amount equal to the greater of three percent (3.0%) of Gross Annual Revenues (defined below), or One Thousand Five Hundred Dollars (\$1,500) per year for each MW of installed capacity (that is, the installed nameplate capacity of the wind turbine as determined by the manufacturer) of wind turbines installed by Lessee on the Property during such year (“**Operating Fees**”). Operating Fees shall be calculated from the date Lessee begins delivering power to a bona fide third-party power purchaser (the “**Operations Date**”) and shall be paid annually on March 1<sup>st</sup> of each year in arrears, for so long as such wind turbines remain on the Property. Once the Lessee indicates to the Lessor the Lessee’s intent to terminate the lease and begin the decommissioning period as described in Section 7.3, then rental shall be calculated per decommissioning procedures in Section 7.3. Along with each payment of Operating Fees to the Lessor, the Lessee shall deliver to Lessor: a report of the total revenues from the Project; and a calculation of Gross Annual Revenues and Operating Fees due to the Lessor for the previous year from the Lessee’s use of the Property. For purposes of this Section 2.3, the first year of operations shall commence on the Operations Date and shall end on February 28 first following the Operations Date. Operating Fee payments for partial years shall be prorated. In the event of Force Majeure, no Operating Fees shall be due or accrue.

Operating Fees based on Gross Annual Revenues will be calculated by: (i) Determining the total number of megawatt hours (“MWh”) of electricity generated from all the wind turbines located on the Property during the year as measured by the meter located at each such wind turbine (the Property MWh); (ii) The Property MWh shall be divided by the total number of MWh of electricity generated during the year by all the wind turbines included in the Project as measured by the meter located at each such wind turbine in the Project area (the Total MWh); (iii) The resulting number shall be multiplied by the Gross Annual Revenues from the Project received by Lessee during the year, and; (iv) That multiplication product shall then be multiplied by three percent (3%).

$\{ (\text{Property MWh} \div \text{Total MWh}) * \text{Gross Annual Revenues} \} * 0.03 = \text{Operating Fees}$

**2.3.1 Gross Annual Revenues.** Gross annual revenues, for the purposes of calculating operating fees under Section 2.3 above, shall mean the gross revenue earned from the Project as measured in megawatt hours from the revenue meter at the interconnection to the high voltage transmission system as the interconnect to a utility transmission system, times the current Power Purchase Agreement sales price or energy sales price at the interconnect revenue meter without deduction or offset of any kind or prior notice or demand. Gross annual revenues will also include payments received by Lessor for attributes such as green tags and carbon credits. It is the intent of the Lessor and the Lessee that Gross revenues should be determined with reference to auditable sales contracts and meters; and that incidental payments from the turbine vendor or insurance proceeds are excluded from the definition of gross revenue. Similarly, payments to the Lessee from the sale of personal property or the assignment of lease rights shall not be considered to fall within the definition of “gross revenues.”

**2.3.2 Revenue Meter.** For purposes of this Lease Agreement, a “Revenue Meter” means an instrument that determines the amount of electrical energy and capacity paid for by third parties. Wind turbines comprising a wind energy project may be connected to different revenue meters. The Revenue Meter for the wind turbines located on the Property shall be located in Sweet Grass County, Montana.

**2.4 Failure to Pay; Payment Under Protest.** Failure to pay any amount due under this Lease Agreement on or before due date shall be an event of default, and, subject to the rights of a Leasehold Mortgagee under Section 11, the Lessor shall have the right to terminate this Lease Agreement if the Lessee fails to cure such default within thirty (30) days after receiving a written notice from the Lessor; *provided, however*, that the Lessee may make any disputed payment under protest. The Lessor shall deposit any payment made under protest in an interest-bearing escrow account maintained by the Lessor. Any full payment made under protest shall not subject this Lease Agreement to termination or cancellation. The funds in escrow shall be remitted to the proper Party or Parties, as may be determined by a Montana Administrative Procedures Act contested-case administrative hearing before an adjudicator selected by the Lessor. Upon any termination of this Lease Agreement as a result of the Lessee’s late payment or non-payment of any financial obligation, the Lessor, in its sole discretion, may reinstate this Lease Agreement upon the Lessee’s payment of any such late or unpaid amounts in addition to a late fee of up to ten percent (10%) of the amount due within thirty (30) days of the Lessor’s request for such payment. A NOTICE OF RENTAL DUE WILL BE SENT TO THE ADDRESS FOR LESSEE SET FORTH IN THE PREAMBLE TO THIS LEASE AGREEMENT ONLY, UNLESS A CHANGE OF ADDRESS IS SENT TO THE LESSOR.

**2.4.1 Lessor Audit Rights.** The Lessor shall have the right to observe and review a copy of the Lessee’s power purchase Agreement at a convenient place somewhere within the state of Montana, though the Lessor shall not be a party to the Lessee’s negotiation for a power purchase Agreement. The Lessee shall also freely make available to representatives of the Lessor at a convenient place somewhere within the state of Montana during all reasonable business hours all accounts, records, and papers of the lessee insofar as they contain any information relating to the production of revenue generated under this lease, the price received therefore, or in Agreements relating thereto, as well as any other pertinent information reasonably necessary for any audit of the operations or necessary in the Lessor’s view to review the Lessee’s performance of its obligations under this Lease.

**2.4.2** If the Audit shows that Operating Fees have been underpaid, then Lessee shall pay Landowner the amount of the deficiency as provided in Section 2.4.3.

**2.4.3** Lessee shall pay Landowner any deficiency within thirty (30) days of final determination of the amount of the deficiency as provided in Section 2.4.2. If the Audit shows that Operating Fees have been overpaid, then the overpayment shall be credited against Lessee's next payment(s) due to Landowner hereunder, or, if the term of this Lease Agreement has expired, the overpayment shall be refunded to Lessee within thirty (30) days.

**2.5 Place of Payment.** All payments required by this Lease Agreement shall be made to the Department of Natural Resources and Conservation, 1625 Eleventh Avenue, PO Box 201601, Helena, MT 59620-1601.

**2.6 Decommissioning and Reclamation Bond** Prior to any construction on the Property, the Lessee shall furnish the Lessor a good and sufficient corporate surety bond, letter of credit or other security ("Bond") satisfactory to the Lessor in the amount of \$1,923,506, which bond shall secure the full performance by the Lessee of its decommissioning of the Project and reclamation of the Property. The Bond shall be in form and issued by a surety company acceptable to the Lessor. The Bond shall be reviewed every five years and may be adjusted by the Lessor to assure that decommissioning and reclamation will occur. A new or modified Bond shall be delivered to the Lessor not less than thirty (30) days following the Lessor's request for an additional bond. Upon any default by the Lessee of its obligations hereunder, the Bond may be revoked by the Lessor, but such Bond and the Lessor's revocation of the bond shall in not limit the liability or obligations of the Lessee or the rights or remedies of the Lessor. The Lessee's failure to have a bond in force at all times during the term of this Lease Agreement in the full amount required by the Lessor shall constitute a material breach of this Lease Agreement unless otherwise agreed to by the Lessor.

**3. TERM & LEASE RENEWAL.** The term of this Lease Agreement ("Term") shall begin on the Effective Date and shall expire on the last day of the twentieth (20<sup>th</sup>) year thereafter plus the period of time prior to the Commercial Operations Date subject to sections 7.1 and 14.1. The Lessee must Commence Commercial Operations within five years of the Effective Date of this Lease or this Lease Agreement automatically terminates. However, the Lessor may, in its sole discretion, extend the time for commencement of Commercial Operations in writing, upon receipt of a request to do so by the Lessee.

If the lease is in good standing at the end of the initial 20-year term, and the Lessee has complied with all its obligations, the Lessee may choose to extend the term for an additional 10 years. In addition, at the end of this 10-year term, if it occurs, the Lessee shall have the right to extend the lease for a second ten-year term, if the lease is in good standing and the Lessee has complied with all its obligations. If the Lease is in good standing and the Lessee has complied with all its obligations after the second ten year term, Lessor and Lessee may agree, upon mutually agreeable terms, to extend this Lease for additional 10 year terms, provided the total term of this Lease does not exceed 99 years.

However, should the Lessor, reasonably decide it is in the best interests of the Lessor not to extend the term of this Lease, the Lessor shall notify the Lessee at least six (6) months prior to

the expiration of the Lease of such decision, the Lessee shall have no extension rights. In such event, compensation for the improvements constructed on the property shall be handled in the manner described in Section 9.7 of this Lease Agreement. The Lessor shall not unreasonably withhold the extension of the terms of the Lease.

**4. RESERVATIONS.** The Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in the Property, except the interest conveyed by this Lease Agreement. The Lessor agrees that any such sale, lease, or other disposition of any interest or estate in the Property shall be subject to the terms and conditions of this Lease Agreement, and shall not interfere with the Lessee's possession or rights hereunder. The Lessor reserves all rights and interests to the Property other than those specifically granted by this Lease Agreement. These reservations include, but are not limited to, the following:

(a) **Mineral Reservation.** The Lessor expressly reserves the right to sell, lease, or otherwise dispose of any interest or estate in any mineral, such as but not limited to, coal, oil, gas, gold, silver, gemstones, building stone, sand, gravel, and clay, or other deposits valuable for building, mining or other commercial purposes. However, the Lessor agrees that such sales, leases, or other dispositions of any mineral interest or estate in the Property shall be subject to the terms and conditions of this Lease Agreement, and shall not interfere with the Lessee's possession or rights hereunder. The Lessor shall notify and coordinate with the Lessee if and when mineral exploration or production is proposed on the Property. No drilling rigs or other structures shall be located within three hundred (300) feet of any wind turbine or within two hundred twenty-five (225) feet of any met tower without Lessee's prior written consent. The Lessee acquires no right under this Lease Agreement to any of said minerals or deposits, and shall not conduct any operations to explore, develop or utilize said minerals or deposits.

**5. RIGHT TO ENTRY.** Representatives of the State Historical Society of the State of Montana shall at all reasonable times, upon reasonable written notification to Lessor and Lessee prior to entry, have the right to enter into and upon the Property for the purpose of carrying out the duties assigned the Historical Society by the State Antiquities Act, 22-3-4, MCA.

**6. WATER RIGHTS.** Any water right appropriated or secured on the Property by any individual or party for use on or off such Property shall be appropriated or secured in the name of the Lessor unless prior written permission to do otherwise is granted by the Lessor. Lessor shall be notified prior to such development or appropriation of water right.

**7. CANCELLATION.**

**7.1 Lessor's Right to Cancel.** Subject to Section 11, the Lessor shall have the power and authority in its discretion to cancel the Lease for any of the following events of default if the Lessee fails to cure such default within thirty (30) days after receiving written notice from the Lessor: (a) for breach of any of the Lessee's obligations under this Lease Agreement; (b) for fraud or misrepresentation; (c) for concealment of facts relating to the issuance of the Lease, which if known would have prevented its issue in the form or to the party issued; (d) for using the Property for other purposes than those authorized by the Lease; or (e) for using or allowing to



be used any part of the Property for any purpose contrary to the laws of the State or the United States. Such cancellation shall not entitle the Lessee to any refund of rentals paid or exemption from the payment of any rents, penalties or other compensation due Lessor. The Lessee shall be given notice and opportunity for a hearing to contest any Lease cancellation as provided in Section 77-6-211, MCA.

**7.2 Lessee's Right to Cancel.** The Lessee may terminate this Lease Agreement in whole or in part, for any reason, upon thirty (30) days written notice to the Lessor. Except as provided below, in the event of such termination of this Lease Agreement, any and all work product of design architect, the landscape architect and any engineering, soils, environmental, or other third party consultants engaged by the Lessee with respect to the Property or the design or construction of the Project or any of the Wind Power Facilities on the Property, or the obtaining of governmental approvals that Lessee owns shall, at Lessor's option, be delivered to the Lessor, at no cost to the Lessor. However, if the Lessee terminates this Lease Agreement prior to the Operation Date, Lessee will retain ownership and possession of, and will not have to deliver to the Lessor, all meteorological data for the Property and any other information that may be deemed a trade secret.

**7.3 Effect of Termination; Rent During Decommissioning Period.** Upon expiration or other termination of this Lease Agreement, whether as to the entire Property or only as to part, the Lessee shall execute and record a quitclaim deed or other instrument terminating the Lessee's right, title, and interest in and to the Property, or to that part thereof as to which this Lease Agreement has been terminated. The Lessee shall within one hundred eighty (180) days after such termination or expiration (the "**Decommissioning Period**"), remove all Wind Power Facilities from the Property or portion as to which this Lease Agreement was terminated and restore the soil to a depth of thirty six (36) inches below the surface to a condition reasonably similar to its original condition as set forth in the Reclamation and Decommissioning Plan attached as Exhibit B. If the highest portion of the concrete foundations that will remain after decommissioning are built thirty six (36) inches or lower below grade, then soil may be filled-in over the concrete foundation as an acceptable method of reclamation. As set forth in Exhibit B, any and all road culverts will be removed; road prisms will be reshaped to its original contour should it facilitate better drainage and erosion control. All reclaimed areas will be promptly seeded with a DNRC Southern Land Office-approved native seed mix. If the Lessee fails to remove such Wind Power Facilities within 180 days, the Lessor may do so, in which case the Lessee shall reimburse the Lessor for the Lessor's reasonable costs of removal. Prior to beginning such Decommissioning Period, the Lessee shall pay the Lessor one-time rent in the amount of twenty-five percent of the Operating Fees paid to the Lessor for the previous twelve-month lease year rental payment. Once the decommissioning is complete the Lessor shall conduct a site inspection to verify and approve that the decommissioning per the Reclamation and Decommissioning plan Exhibit B is complete. A daily rental for decommissioning shall be calculated using the rental for the previous twelve-month lease year rental payment, divided by 365. This daily rental shall be used to determine the actual decommissioning period rental after it is complete by multiplying the number of days in the Decommissioning Period by the daily rental, with any excess payment being refunded to Lessee by Lessor. Such Decommissioning Period rent shall be paid to the Lessor within fifteen (15) days after the expiration or earlier termination of this Lease Agreement. Should the Decommissioning Period take more than 90 days, the Lessee shall pay to Lessor, prior to the end of the first 90 days, another one-time rent in

the amount of twenty-five percent of the Operating Fees paid to the Lessor for the previous twelve-month lease year rental payment while the lease was still operational. This amount shall be similarly prorated, if needed, as described above in this section.

## **8. LESSEE'S REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**8.1 Compliance with Applicable Laws.** The Lessee agrees to comply with all applicable laws and regulations in effect at the date of this Lease Agreement, and that may, from time to time thereafter, be amended or adopted and which do not deprive the Lessee of an existing property right.

**8.2 Utilities.** The Lessee, at its sole cost and expense, shall determine the availability of, and shall cause to be installed in, on, and about the leased premises, all facilities necessary to supply thereto all water, sewer, gas, electricity, telephone and other like services required in the Lessee's operations hereunder. The Lessee shall pay all connection or acreage assessments or charges levied by any public utility, agency or municipality with respect to their services. Notwithstanding the foregoing, the Lessee shall not enter into any contract or Agreement with any city, county, or other governmental agency or body or public utility with reference to sewer lines or connections, water lines or connections, or street improvements relating to the leased premises without the prior written consent of the Lessor, which consent shall not reasonably be withheld.

**8.3 Taxes.** The Lessee shall pay all taxes, beneficial use tax, special assessments, levies, fees and other governmental charges of every kind or nature that may be levied by any and all federal, state, county, municipality, and any other taxes or assessing authority upon the Wind Power Facilities owned by the Lessee on the Property during the Term. Payment shall be made not later than thirty (30) days prior to delinquency of taxes, special assessments, levies, fees, and other governmental charges. The Lessee shall cause all taxes imposed upon all Wind Power Facilities located on the Property, to be levied or assessed separately from the Property and not as a lien thereunder.

**8.4 Fire Prevention and Suppression.** The Lessee assumes all responsibility for performing at his own cost and expense all fire prevention and suppression work necessary or required to protect the forage, trees, buildings and structures on the Property to the same extent as if the Property was owned by the Lessee.

**8.5 Weed Control.** The Lessee agrees, at the Lessee's own expense and cost, to keep the property free from noxious weeds in compliance with the Montana County Noxious Weed Management Act and shall submit to the County Weed Board for its approval a weed control plan specifying weed control mitigation measures and revegetation plans prior to ground disturbing activities. The plan must describe the time and method of seeding, fertilization, recommended plant species, use of weed-free seed and the weed management procedures to be used. Prior to entry of construction equipment on State land all construction equipment will be power washed to avoid transporting noxious weed seed onto such land. The Lessee shall monitor areas of the Property disturbed during construction for infestation by noxious weeds at regular intervals coinciding with routine Project maintenance and monitoring activities. The Lessee shall retain responsibility for three years following reclamation to monitor and control

noxious weeds. The Lessee will cooperate with county, state agencies, and adjacent private landowners interested in managing invasive weeds.

**8.6 Lessee Liability; Indemnification.** This Lease Agreement is made upon the express condition that the Lessee shall assume all liability for any injury, property damage or loss by any persons and for any injury, property damage or loss to any employee or property of the Lessee, its agents or employees, or third persons, or to the Lessee, caused by Lessee's activities on or use of the Property. The Lessee shall indemnify the Lessor and save, protect, defend, and hold the Lessor harmless from any and all liability, loss, damage, expense (including legal expenses and reasonable attorney fees), causes of action, suits, claims or judgments arising from or based upon the Lessor's ownership of the Property arising from the Lessee's use and activities on the Property. The Lessee shall satisfy, pay and discharge any and all judgments and fines that may be recovered against the Lessor in any such action(s) provided, however, that the Lessor shall have given the Lessee written notice of any such claim or demand promptly after receiving notice thereof. The Lessee further agrees to save harmless and indemnify the Lessor for any losses to the Lessor occasioned by the levy of any penalties, fines, charges or assessments made against the Property by the U.S. or State government because of any violation of or noncompliance with any Federal or State law by the Lessee. Notwithstanding anything to the contrary in this paragraph, the Lessee shall have no liability for losses to the extent they are caused by or result from the willful or negligent actions or omissions of the Lessor. The Lessee's obligation to indemnify the Lessor, as provided in this Lease Agreement, is an independent obligation which shall survive the termination of this Lease Agreement.

**8.7 Garbage; Appearance.** The Lessee shall keep the areas surrounding its Wind Power Facilities and Transmission Facilities free of all litter, garbage, debris, and unsightly objects. The Lessee shall not store any equipment not related to the Project or the Wind Power Facilities on the Property. The Lessee shall maintain its Wind Power Facilities and Transmission Facilities in a clean orderly and neat fashion to conform to the high standards of the Property and shall not commit waste or permit any waste to be committed thereon. The Lessee shall not burn any trash in or about the Property or permit any accumulation of trash. The Lessee shall store all trash, refuse and waste material so as not to constitute a health or fire hazard or nuisance, in adequately covered containers that are located within the Property and which are not visible to the general public.

**8.8 Mechanics and Labor Liens.** The Lessee or its agents or assigns shall not permit any claim of lien made by any mechanic, material man, laborer, or other similar liens to stand against the Property for work or labor done, services performed, or materials used or furnished to be used in or about the Property for or in connection with any construction, improvements or maintenance or repair thereon made or permitted to be made by the Lessee, its agents, or sublessees. The Lessee shall cause any such claim of lien to be fully discharged within thirty (30) days after the date of filing thereof; provided, however, that in the event the Lessee, in good faith, disputes the validity or amount of any such claim of lien, and if the Lessee shall give to the Lessor such security as the Lessor may reasonably require to insure payment thereof and prevent any sale, foreclosure, or forfeiture of the Property or any portion thereof by reason of such nonpayment, the Lessee shall not be deemed to be in breach of this obligation so long as the Lessee is diligently pursuing a resolution of such dispute, if litigation or arbitration results there from, discharges said lien within the time limits specified above.

No liens or claims or notices of potential liens of any character whatsoever created or suffered by the Lessee shall in any way, or to any extent, affect the interest or right of the Lessor in any buildings or other improvements on the Property, or attached to or affect the Lessor's rights in the Property.

## **9. IMPROVEMENTS CONSTRUCTED BY LESSEE**

**9.1 Construction.** The Lessee is hereby authorized by the Lessor to construct or renovate within the time schedule specified, at the Lessee's sole cost and expense, those Wind Power Facilities and Transmission Facilities described on the Preliminary Site Plan.

**9.1.1 Site Plan.** Within ten (10) days after the appropriate governmental agency has approved plans for any construction or grading activities upon the Property, the Lessee shall provide the Lessor with a copy of the approved Site Plan (the "**Approved Site Plan**"). The Approved Site Plan shall include a legal description and survey of the pertinent portion of the Property locating the Wind Power Facilities and Transmission Facilities, utilities and grading, and a drawing of the elevation of the Wind Power Facilities and Transmission Facilities. Following the receipt of written request thereof from the Lessor, the Lessee shall provide the Lessor with notice of substantial changes to any and all improvements, together with a revised Approved Site Plan.

**9.1.2 As-Built Drawings.** Upon completion of construction of the Project, the Lessee shall furnish the Lessor with a certificate of substantial completion executed by the architect or engineer for the Project, and a complete set of "as built" plans for the Project. The Lessee shall thereafter furnish the Lessor with copies of any updated plans showing all changes and modifications thereto. The Lessee shall also furnish to the Lessor copies of certificates of occupancy or other similar documents issued to certify completion of construction in compliance with applicable requirements.

**9.1.3 Alterations.** At any time and from time to time during the Term, the Lessee may make, at its sole cost and expense, changes and alterations to the Project as located on the Property or any part thereof so long as such changes and alterations are not substantial and do not change the character of that portion of the Project located on the Property. Regardless of cost, any new road construction outside of the approved site plan must be submitted and approved by the Lessor. Also, any new construction on the Property associated with the Project involving a cost in excess of one million dollars (\$1,000,000) within any two-year period shall be subject to the following:

- (a) The plans or specifications for such new construction, including amendments of such plans or specifications, shall be submitted to the Lessor for its review. Within twenty (20) days after receipt of said plans or specifications, the Lessor shall, in writing, submit comments on the plans or specifications or inform the Lessee of the additional time required to complete the review thereof. If the Lessor fails to inform the Lessee in writing of the need for additional time within the twenty (20) day period, the Lessor shall be deemed to have agreed to the plans or specifications as submitted. The Lessor shall not unreasonably object to or hinder new construction or alterations to that portion of the Project located on the Property.

(b) No new construction or alteration shall be undertaken until the Lessee shall have procured and paid for all permits, licenses and authorizations required by applicable law. All changes and alterations shall be made in a good and workmanlike manner and in compliance with all applicable legal requirements. Upon completion of new construction, the Lessee shall furnish the Lessor with a certificate of substantial completion. The Lessee shall thereafter furnish the Lessor with copies of the updated plans showing all changes and modifications thereto. The Lessee shall also furnish to the Lessor copies of documents issued to certify completion of construction in compliance with applicable requirements.

## **9.2 Ownership of Improvements; Equipment; Decommissioning and Removal.**

**9.2.1 Ownership of Improvements.** During the Term of this Lease Agreement, the Project and all other improvements constructed by the Lessee, including without limitation all additions, alterations and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of the Lessee. However, throughout the Term, any liens, encumbrances or claims of third parties with respect to any of the foregoing, including any part of the Project's mechanical or electrical systems shall be expressly subordinate, except Leasehold Mortgagee (defined in Section 11) liens, encumbrances or claims, and subject to the rights of the Lessor except as provided in Section 9.2.2.

**9.2.2 Equipment.** In constructing the Project upon the Property, the Lessee and its sublessees may place or install in the Project such improvements, trade fixtures and equipment as the Lessee or its sublessees shall deem desirable for the conduct of business therein. Property, trade fixtures and equipment used in the conduct of business by the Lessee and its sublessees placed by the Lessee or its sublessees on or in the Project shall become part of the Project, even if nailed, screwed or otherwise fastened to the improvements or buildings of the Project, but shall retain their status as property of the Lessee during the Term. At the expiration or earlier termination of this Lease Agreement, the Lessee shall remove all such equipment and fixtures and restore the Property in accordance with Section 7.3 and the Reclamation and Decommissioning Plan.

**9.3 Development Rights.** The Lessee shall not undertake development of the Property other than to construct the Project and the changes and alterations thereto approved by the Lessor in accordance with Section 9.1 above. The Lessee shall not represent to any person, governmental body or other entity that the Lessee is the fee owner of the Property.

**9.4 Payment of Amounts Due.** The Lessee shall regularly and timely pay any and all amounts properly payable to third parties with respect to such work and will maintain its books and records, and shall make such books and records available for inspection by the Lessor at a convenient place somewhere within the State of Montana during regular business hours.

**9.5 Limitation of Lessor Liability.** During the Term, the Lessor shall have no liabilities, obligations or responsibilities whatsoever with respect thereto or with respect to any plans or specifications submitted to Lessor pursuant to this Lease Agreement. The Lessor's review of any plans or specifications is solely for its own purposes, and the Lessor does not make

any warranty concerning the appropriateness of any such plans or specifications for any other purpose. The Lessor's approval of (or failure to disapprove) any such plans and specifications shall not render the Lessor liable therefore, and the Lessee hereby covenants and agrees to indemnify, defend and hold the Lessor harmless from and against any and all claims arising out of or from the use of such plans and specifications. The Lessee's obligation to indemnify the Lessor herein is an independent obligation which shall survive the termination of this Lease Agreement.

**9.6 Zoning and Special Improvement District.** Any new special improvement district fees assessed to the Property by Sweet Grass County and relating to the Project shall be the sole cost and expense of the Lessee. The Lessee agrees to abide by the applicable provisions of any zoning ordinances. To the extent consistent with the purpose of this Lease Agreement, the Lessor shall cooperate with the Lessee in obtaining any necessary or desired site plan and design review approvals, stipulations modifications, use permits and any other necessary governmental approvals and shall execute and deliver such petitions, plans, applications or other documents as the Lessee may from time to time reasonably request to effect such governmental approvals. The Lessee shall not rezone any part or all of the parcel without the Lessor's written consent.

**9.7 Audit.** The Lessee shall maintain reasonable records, for a period of eight years, of its performance under this Lease Agreement. The Lessee agrees that the Lessor, the Legislative Auditor, or the Legislative Fiscal Analyst may audit all such records, reports, and other documents that the Lessee maintains under or in the course of this Lease Agreement to ensure compliance with this Lease Agreement. Such records, reports, and other documents may be audited at any reasonable time at a convenient place somewhere within the State of Montana subject to a period of eight years.

**9.8 Avian and Bat Management Practices and Post-Construction Monitoring.** The Lessee agrees to comply with those Stipulations regarding Avian, Bat and Best Management Practices attached hereto as Exhibit B. The Lessee will perform at least two years of avian and bat post-construction monitoring as described in Appendix F of the August 10, 2009 Draft Environmental Impact Statement dated. The Technical Advisory Committee will review avian and bat monitoring plans and data and provide guidance and advice on corrective action as necessary.

**9.9 FAA Regulations.** The Lessee will adhere to FAA regulations and standards regarding wind turbines.

**9.10 Speed Limits.** The Lessee will post appropriate signs to signify speed limits and other road signs for the safety for all vehicles and wildlife on roads

**9.11 Fencing.** Any new fences built as part of the Project will have a smooth top wire no more than 42" above the ground, and a minimum of 18" inches between the ground and a smooth bottom wire.

**9.12 Re seeding.** To lessen short-term visual resource impacts, vegetation disturbance, and the number of cuts and fills, new road construction shall be minimized as much

as possible. All disturbed areas will be promptly seeded with a DNRC Southern Land Office-approved native seed mix.

**9.13 Color.** All wind turbines on the Property will be a flat gray or white, non-reflective color.

**9.14 Transportation Plan.** The Lessee will submit a transportation plan to the Sweet Grass County and Park County (if Park County roads are utilized) Board of Commissioners. This plan must be approved by the County Commission(s) prior to commencement of construction on the Property and will detail any improvements necessary on existing County roads.

**9.15 Riparian Turbine Placement.** No wind turbine shall be installed or constructed within any riparian area identified on the preliminary site plan attached as Exhibit A. Turbine CT - 4 will be relocated so that it is at least 66 meters away from a riparian zone, as designated by Long: 110 10' 25.84, Lat: 45 46'55.17.

**9.16 Construction Time Periods.** All construction activities will occur during dry (non-saturated) or frozen soil conditions to minimize rutting and soil compaction after consultation with the Southern Land Office of Lessor.

**10. LIENS AND TENANTS.** The Lessor shall provide the Lessee with all information reasonably required for Lessee, at its expense, to identify all liens and other exceptions to the Lessor's fee title ownership of the Property (collectively, "**Liens**," and the holders of Liens and tenants are referred to as "**Lienholders**"). The Lessor shall cooperate with the Lessee to obtain a non-disturbance Agreement from each Lienholder (recorded or unrecorded), which provides that the Lienholder shall not disturb the Lessor's possession or rights under this Lease Agreement or terminate this Lease Agreement. If the Lessee and the Lessor are unable to obtain a non-disturbance Agreement from a Lienholder, the Lessee shall be entitled (but not obligated) to withdraw from this Lease Agreement or to make payments in fulfillment of the Lessor's obligations to the Lienholder and may, with the Lessor's written permission, deduct the amount of such payments from amounts due to the Lessor under this Lease Agreement.

## **11. MORTGAGES**

**11.1 Definitions.** Any security instrument including, but not limited to, a deed of trust, mortgage, Agreement for sale or other security device which creates an encumbrance on Lessee's or any sub-lessee's leasehold interest is herein referred to as a "**Permitted Mortgage**" unless it is held by (a) a parent or wholly owned subsidiary corporation of the Lessee, (b) a corporation or business entity under common control of or resulting from the reconstruction, consolidation, amalgamation or merger of the Lessee (or not less than one half of the principals thereof), or (c) an entity in which the Lessee has the majority interest (each, an "**Affiliated Entity**"). The holder of the Permitted Mortgage is herein referred to as a "**Leasehold Mortgagee**." In no event shall an Affiliated Entity be deemed a Leasehold Mortgagee.

**11.2 Filing.** No Permitted Mortgage shall be effective until a true copy thereof is filed with the Lessor. The term of any such Permitted Mortgage shall not be longer than the remaining term of the Lease.

**11.3 Preconditions.** The Lessee or any sublessee may make one or more Permitted Mortgages upon its leasehold interests, or any fractional portion thereof, provided that:

- (a) The Lessee, its sub-lessee or the Leasehold Mortgagee shall promptly deliver to the Lessor in the manner herein provided for the giving of notice to the Lessor, a true copy of the Permitted Mortgage and of any assignment thereof and shall notify the Lessor of the address of the Leasehold Mortgagee to which notices may be sent; and
- (b) Each Permitted Mortgage shall contain provisions permitting the disposition and application of condemnation awards in the manner provided in this Lease Agreement.

**11.4 Conditions.** With respect to any permitted Mortgage filed in accordance with the provisions of Section 11.2, the following provisions shall apply:

- (a) the Lessor, upon providing the Lessee any notice of (i) default under this Lease Agreement, or (ii) a termination of this Lease Agreement, or (iii) a matter on which the Lessor may predicate or claim a default, shall at the same time provide a true copy of such notice to every Leasehold Mortgagee. No such notice by the Lessor to the Lessee shall be deemed to have been duly given unless and until a copy thereof has been so provided to every Leasehold Mortgagee that has filed a notice with the Lessor in accordance with Section 11. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period after the receipt of such notice for remedying any default or acts or omissions which are the subject matter of such notice or causing the same to be remedied, as is given the Lessee.
- (b) Any Leasehold Mortgagee shall have the right to cure any default of the Lessee hereunder whether the same consists of the failure to pay rent or any other sums due and owing hereunder or the failure to perform any other matter or thing which the Lessee is hereby required to do or perform, and the Lessor shall accept such performance on the part of the Leasehold Mortgagee as though the same had been done or performed by the Lessee.
- (c) Any Leasehold Mortgagee may, at the time of any damage or destruction, by fire or otherwise, to all or any portion of the Premises or any machinery, fixture, or equipment therein, at no cost or expense to the Lessor, repair the same or construct new buildings, as the case may be.
- (d) In the case of any default by the Lessee, the Lessor will take no action by reason of any such default so long as the periods for the Leasehold Mortgagee's opportunity to cure the Lessee's defaults as set forth herein have not run. In the event the Lessor issues a cancellation order, the order will not become final if within thirty (30) days of the date of issuance of the notice of cancellation, the Leasehold Mortgagee holding a Permitted Mortgage encumbering the Lessee's leasehold interest cures the default.
- (e) Any Leasehold Mortgagee or purchaser of the Lessee's or, if applicable, any sublessee's leasehold interest (or any portion thereof) may become the legal owner and



holder of all or a portion of this Lease Agreement or such sublease by judicial or non-judicial foreclosure of a Permitted Mortgage or as a result of the assignment of this Lease Agreement or such sublease in lieu of foreclosure, whereupon such Leasehold Mortgagee or purchaser at a foreclosure sale shall immediately become and remain liable under this Lease Agreement (or such sublease) to the same extent as the Lessee (or such sublessee) and any and all benefits that would thereafter accrue to the Lessee (or such sublessee) under this Lease Agreement (or such sublease) shall belong to such Leasehold Mortgagee or purchaser. In case any such Leasehold Mortgagee or purchaser by foreclosure of the Lessee's interest becomes the owner and holder of this Lease Agreement, any such of the same events described in Section 7.1 by such Leasehold Mortgagee or purchaser shall constitute a default, and the Lessor shall be entitled to the same remedies, but only with respect to that part or portion of the Property held under this Lease Agreement by such Leasehold Mortgagee or purchaser. Nothing contained herein shall be construed or interpreted to preclude the Lessor from exercising any of its rights and remedies hereunder if Leasehold Mortgagee or purchaser, within the periods provided herein, fail to cure any event of default hereunder occurring after the Leasehold Mortgagee or purchaser acquires its interest herein.

(f) As to any Permitted Mortgage of Lessee's leasehold interest, the Lessor consents to a provision therein for an assignment of rents due from sublessee to the holder thereof, effective upon any default under such Permitted Mortgage, subject to the Lessee's or the Lessor's right to collect such rents. The holder thereof in any action to foreclose the same shall be entitled to the appointment of a receiver.

(g) Nothing herein contained shall be deemed to impose any obligation on the part of the Lessor to deliver physical possession of the Property to any Leasehold Mortgagee, or to its nominee. The Lessor agrees, however, that the Lessor will, at the sole cost and expense of such Leasehold Mortgagee, or its nominee, cooperate in the prosecution of summary proceedings to evict the defaulting Lessee (or sub-lessee, if applicable).

(h) The Lessor shall, without charge, at any time and from time to time hereafter, within ten (10) days after written request of the Lessee, any sub-lessee, or Leasehold Mortgagee to do so, certify by written instrument duly executed and acknowledged to any Leasehold Mortgagee or sub-lessee, purchaser, assignee of any right, title or interest of the Lessee in the Lease or proposed Leasehold Mortgagee sub-lessee, purchaser, or assignee of any right, title or interest of the Lessee in the Lease or any other person, firm, or corporation specified in such request: (i) as to whether this Lease Agreement has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (ii) as to the existence of any default hereunder to the best of the Lessor's knowledge; (iii) as to the Effective Date and of the Term; (iv) acknowledging that the lien holder is the Leasehold Mortgagee; (v) as to whether the Lessor has assigned its interests or any portion thereof in the Lease; (vi) certifying that, to the best of the Lessor's knowledge, there has been no violation of any law, ordinance or governmental rule or regulation relating to the Property; (vii) acknowledging that the creation of the Permitted Mortgage or the Leasehold Mortgagee's acquisition of the Lessee's interest in the Property by foreclosure or otherwise will not constitute an event of default under the Lease; and (viii)

as to any other matters as may be reasonably so requested. Any such certificate may be relied upon by the Lessee and any other person, firm, or corporation to whom the same may be exhibited or delivered.

## **12. ASSIGNMENTS**

**12.1 Assignment.** If all rentals due have been paid and the Lessee is not in default under this Lease Agreement, the Lessee may assign this Lease Agreement with the prior written approval of the Lessor, to a third party for a term not to exceed the remainder of the Term. Except as otherwise provided herein, no such assignment shall be binding on the Lessor. The Lessor shall not unreasonably withhold its approval of assignments of this Lease Agreement. All proposed assignees must meet the qualifications detailed in that certain Request for Proposals issued by the Lessor on August 7, 2005 in order to be eligible to hold this Lease Agreement as an assignee.

**12.2 Financing.** Without approval by the Lessor, the Lessee shall have the right at any time and from time to time during the term of this Lease Agreement to encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its right, title and interest in and to this Lease Agreement to any person or entity for the purpose of obtaining financing.

## **13. SUBLEASES.**

**13.1 Right to Sublease.** The Lessee shall have the right to sublease the Property to another party, provided that no such sublease shall be effective until a copy thereof has been filed with the Lessor and approved by the Lessor.

**13.2 Sublease Term.** Each sublease shall be upon such terms and conditions as the Lessee and the pertinent sublessee shall mutually agree; provided, however,

**13.2.1** No sublease shall relieve the Lessee of its responsibility to pay and perform all of its obligations hereunder;

**13.2.2** The Lessee shall not be entitled under a sublease to collect rent which is prepaid in excess of one year in advance, unless the Lessee either (i) prepays annual rent for the portion of the Property covered by the sublease, or (ii) provides the Lessor with a letter of credit or other bond in such form as is reasonably satisfactory to the Lessor and secures payment to the Lessor of the pro rata portion of such prepaid rent which the Lessor would be entitled to receive as annual rent under this Lease Agreement for the pertinent portion of the Property;

**13.2.3** The proposed use of the portion of the Property subject to the sublease shall be in conformance with the permitted use under this Lease Agreement;

**13.2.4** The Lessee shall promptly after execution of each sublease, furnish the Lessor a true copy thereof; and

**13.2.5** Each sublease shall be expressly subordinate to the interest and rights of the Lessor in the Property and under this Lease Agreement, and requires the sublessee to not take action in contravention of the terms of this Lease Agreement.

**13.3 Attornment.** If this Lease Agreement is terminated prior to the expiration of the Term, then, so long as the sublessee complies with the terms and conditions set forth in its sublease, it shall attorn thereunder directly to the Lessor. The Lessor shall attorn to such sublessee, including recognizing the rights of any lenders under the sublease, and the Lessor shall not disturb such sub-lessee, in accordance with the terms of the pertinent sublease, provided, however, that:

**13.3.1** The Lessor's obligation thereunder shall be no greater and its rights no less than those set forth in this Lease Agreement; and

**13.3.2** No sub-lessee shall be required to make any payment to the Lessor unless and until such sub-lessee the Lessor's obligations thereunder shall be no greater and its rights no less than those set forth in this shall have received written notice from the Lessor of the termination of this Lease Agreement and direction that payments and performance thereafter be made directly to the Lessor. Thereafter, upon such sub-lessee's timely payment or performance to the Lessor, the Lessor shall not be entitled to claim a default for not having received any corresponding payment or performance from the Lessee. If a sublessee, however, receives conflicting written notices demanding payment or performance from the Lessor and the Lessee, such sublessee shall have the right to interplead such payment and/or other matters in any court of competent jurisdiction, in which event such sub-lessee shall not be deemed in default. Payment or performance when and as ordered by such court shall constitute full performance. So long as a sub-lessee has made payment for performance to the Lessor or interpleaded such matters and is not subject to termination for default of the pertinent sublease, the Lessor shall not join that sub-lessee as a party defendant in any auction or proceeding or take any other action for the purpose of terminating sublessee's interest and estate because of any default under or termination of this Lease Agreement. Moreover, notwithstanding the termination of this Lease Agreement, so long as the Lessee has complied with the requirements hereof relating to subleases, the Lessor shall recognize any and all subleases entered into pursuant to the terms hereof and any executory contracts to sublease pursuant to the terms hereof; provided, however, that any and all benefits which would thereafter accrue to the Lessee under the sublease shall belong to the Lessor.

**GENERAL RECREATIONAL USE.** The Property is closed to recreational access pursuant to ARM 36.25.150, because this wind energy lease constitutes a commercial lease of state lands. The Southern Land Office Area Manager could open the Property recreational use pursuant to the process defined in ARM, if a petition is received. The Area Manager will notify the Lessee of a request to re-open the Property and may restrict the recreational use that is permitted on the Property, including the limitation on the discharge of firearms.

**14.**

**15. INSURANCE.** The Lessee shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained during the entire Term, the insurance described in this Section 24 (or if not available, then its available equivalent), issued by an insurance company or

companies licensed to do business in the State of Montana, having a rating of “A” or better by A.M. Best, and reasonably covering and protecting the Lessee.

**15.1 Type of Insurance.** The Lessee shall procure and maintain, or cause its sublessees to provide and keep in force (and name the Lessor and the Lessee as an additional insured), the following during the Term:

(a) **Commercial General Liability Insurance.** Comprehensive or commercial general liability insurance including contractual liability covering all claims arising out of the ownership, operations, maintenance, condition or use of the Property, for personal and bodily injury and death, and damages to others’ persons, or property sustained in, or about the Property and the Project, and the appurtenances thereto, with limits of liability not less than the following:

For personal and bodily injury and death, and damage to other’s property, and liability, with limits of not less than Two Million Dollars (\$2,000,000) for any one accident or each occurrence.

Such limits may be achieved through the use of umbrella liability insurance sufficient to meet the requirements of this Section for the Property and Project.

(b) **Physical Property Damage Insurance.** Physical damage insurance covering all real and physical property, other than the personal property of subtenants, located on or in, or constituting a part of, the Property (including but not limited to the Project) in an amount equal to at least one hundred percent (100%) of replacement value of all such property. Such insurance shall afford coverage for damages resulting from (i) fire, (ii) perils covered by extended coverage insurance as embraced in the Standard Bureau form used in the State of Montana, (iii) explosion of steam and pressure boilers and similar apparatus located in the Project, (iv) earthquake or the shifting or moving of the earth, and (v) flood damage if the Property is located within a flood plain. Lessee shall not be required to maintain insurance for war risks; provided, however, if Lessee shall obtain any such coverage, then, for as long as such insurance is maintained by Lessee, Lessor shall be entitled to the benefits of: (i) the first sentence of Section 15.3 below; and (ii) Section (c) below.

(c) **Builders Risk Insurance.** Contingent liability and builder’s all-risk insurance in an amount not less than the completed building, addition, or structure during construction of the project, and during any subsequent new construction related to the Project made by Lessee.

(d) **Workman’s Compensation Insurance.** Workman’s compensation and employer’s liability insurance with respect to any work by employees of Lessee on or about the Property.

**15.2 Terms of Insurance.** The policies required under Section 15.1 above shall name the Lessor as additional insured and the Lessee shall provide promptly to the Lessor certificates

of insurance and copies of policies obtained by the Lessee hereunder. Further, all policies of insurance described in Section 15.1 above shall:

- (a) Be written as primarily policies not contributing with and not in excess of coverage that Lessor may carry.
- (b) Contain an endorsement providing that such insurance may not be materially changed, amended or canceled with respect to the Lessor except after forty-five (45) days prior written notice from insurance company to the Lessor.
- (c) Contain an endorsement containing express waiver of any right of subrogation by the insurance company against the Lessor, its elected officials, agents and employees.
- (d) Provide that the insurance proceeds of any loss will be payable notwithstanding any act or negligence of the Lessee which might otherwise result in a forfeiture of said insurance.
- (e) Expressly provide that the Lessor shall not be required to give notice of accidents or claims and that the Lessor shall have no liability for premiums.

**15.3 Lessor's Acquisition of Insurance.** If the Lessee at any time during the Term fails to procure or maintain such insurance or to pay the premiums therefore, the Lessor shall have the right to procure such substitute insurance as the Lessor deems appropriate (but shall be under no obligation to do so) and to pay any and all premiums thereon, and the Lessee shall pay to the Lessor upon demand the full amount so paid and expended by the Lessor, from the date of such expenditure by the Lessor until repayment thereof by the Lessee. Any policies of insurance obtained by the Lessor covering physical damage to the Property or Project shall contain a waiver of subrogation against the Lessee if and to the extent such waiver is obtainable and if the Lessee pays to the Lessor on demand the additional costs, if any, incurred in obtaining such waiver. Any insurance or self-insurance procured or maintained by the Lessor shall be excess coverage, non-contributory and for the benefit of the Lessor only.

**15.4 Proceeds and Other Funds Held in Trust.** All proceeds of the Lessee's insurance received by the Lessee shall be applied in accordance with the provision of Section 15.5 below.

**15.5 Application of Proceeds of Physical Damage Insurance.** With respect to any insurance policies as described in Section 15.1(b) (Physical Property Damage Insurance) above, the application of insurance proceeds from damage or loss to property shall be determined in accordance with Section 16 below and, in the event of any repair, replacement, restoration or rebuilding, the Lessee shall apply the proceeds of the insurance collected to the cost of such work upon certificate of progress and/or completion in form satisfactory to the Lessor by the licensed architect or engineer in charge of the work. Any amounts payable to the Lessee or any affiliate of the Lessee for work or services performed or materials provided as part of any such repair, replacement, restoration or rebuilding shall not exceed competitive rates for such services or materials.

## **16. REPAIRS**

**16.1 Acceptance of Property.** The Lessee accepts the Property and any improvements thereon as is where is in the condition they are in as of the Effective Date without the obligation of the Lessor to make any repairs, additions or improvements thereto.

**16.2 Lessor's Repairs.** The Lessor shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs in, on, or about the Property, or any part thereof, during the Term or any extension thereof.

**16.3 Lessee's Repairs and Operation.** The Lessee shall make any and all additions to or alternations or repairs in and about the Property which may be required by, and shall otherwise observe and comply with, all public laws, statutes and ordinances and regulations which from time to time are applicable to the Property and/or the Project. All business operations conducted upon the Property shall comply with all applicable laws, statutes and ordinances. In no event shall the Lessee undertake or suffer any activity to be conducted upon the Property or within the Project that constitutes a nuisance, which is immoral or obscene, or which is a threat to the welfare of the general public.

## **17. DAMAGE OR DESTRUCTION, FORCE MAJUERE**

**17.1 Effect of Damage or Destruction.** In the event of any damage to or destruction arising from or relating to Lessee's activities on and use of the Property or any improvements thereon, the Lessee shall promptly give written notice thereof to the Lessor. The Lessee shall promptly repair or restore the Property as nearly as possible to its condition immediately prior to such damage or destruction unless the Lessor and the Lessee mutually agree in writing that such repair and restoration is not feasible, in which event this Lease Agreement shall thereupon terminate. All such repair and restoration shall be performed in accordance with the requirements of Section 16 above. The Lessee's duty to repair any damage or destruction of the Property or any improvements thereon shall not be conditioned upon the availability of any insurance proceeds, from the Lessee's insurance, to the Lessee from which the cost of repairs may be paid. Unless this Lease Agreement is so terminated by mutual Agreement, there shall be no abatement or reduction in rent or amounts due during such repair and restoration. Any insurance proceeds from the Lessee's insurance payable by reason of such damage or destruction shall be made available by the Lessee to pay the cost of such reconstruction; provided, however, in the event the Lessee is in default under the terms of this Lease Agreement at the time such damage or destruction occurs, the Lessor may elect to terminate this Lease Agreement and the Lessor shall thereafter have the right to retain all insurance proceeds from the Lessee's insurance payable as a result of such damage or destruction.

**17.2 Force Majeure.** Notwithstanding any other provision of this Lease, if either Party's performance of this Lease or of any obligation hereunder is interfered with, delayed, restricted or prevented, in whole or in part, by reason of an event of Force Majeure (as defined below), then the affected Party, upon giving notice to the other Party, shall be excused from such performance (other than any obligation to pay Rent) to the extent and for the duration of such interference, delay, restriction or prevention, and the Term of this Lease and any other time periods set forth herein shall continue and be extended for a like period of time. "***Force***

*Majeure*” means any act or condition beyond the reasonable control of such Party, whether or not similar to the matters or conditions herein specifically enumerated, and includes: acts of God or the elements (including fire, earthquake, explosion, flood, epidemic or any other casualty or accident); strikes, lock outs or other labor disputes; delays in transportation; transmission system power failure or power surge; war, terrorism, sabotage, or civil strife or other violence. In no event shall any claim or period of Force Majeure by Lessee or Lessor extend longer than three years.

## **18. HAZARDOUS SUBSTANCES**

**18.1 Presence and Use of Hazardous Substances.** The Lessee shall not, without the Lessor’s prior written consent, keep on or around the Property, for use, disposal, treatment, generation, storage or sale, any substance designated as, or containing components designated as hazardous, dangerous, toxic or harmful (collectively referred to as “**Hazardous Substances**”), and/or is subject to regulation, by federal, state, or local law, regulation statute or ordinance. With respect to any such Hazardous Substance allowed on the Property by the Lessor pursuant to this Section, the Lessee shall:

- (a) Comply promptly, timely, and completely with all governmental requirements for reporting, keeping and submitting manifests, and obtaining and keeping current identification numbers;
- (b) Submit to the Lessor true and correct copies of all reports, manifests, and identification numbers at the same time as they are required to be and/or are submitted to the appropriate governmental authorities;
- (c) Within ten (10) days of the Lessor’s request, submit written reports to the Lessor regarding the Lessee’s use, storage, treatment, transportation, generation, disposal or sale of Hazardous Substances and provide evidence satisfactory to the Lessor of the Lessee’s compliance with the applicable government regulations;
- (d) Allow the Lessor or the Lessor’s agent or representative to come on the Property at all times to check Lessee’s compliance with all applicable governmental regulations regarding Hazardous Substances;
- (e) Comply with minimum levels, standards or other performance standards or requirements which may be set or established for certain Hazardous Substances (if minimum standards or levels are applicable to Hazardous Substances present on the Property, such levels or standards shall be established by an on-site inspection by the appropriate governmental authorities and shall be set forth in an addendum to this Lease Agreement); and
- (f) Comply with all applicable governmental rules, regulations and requirements regarding the proper and lawful use, sale, transportation, generation, treatment, and disposal of Hazardous Substances,

Any and all costs incurred by the Lessor and associated with the Lessor's inspection of the Property and the Lessor's monitoring of the Lessee's compliance with this Section 18, including the Lessor's attorney's fees and costs, shall be additional rent and shall be due and payable to Lessor immediately upon demand by Lessor.

## **18.2 Cleanup Costs, Default and Indemnification.**

**18.2.1** The Lessee shall be fully and completely liable to the Lessor for any and all cleanup costs, abatement orders, and any and all other charges, fees, penalties (administrative or civil) imposed by any governmental authority with respect to the Lessee's use, disposal, transportation, generation and/or sale of Hazardous substances on the Property.

**18.2.2** The Lessee shall indemnify, defend and save the Lessor harmless from any and all of the costs, fees, penalties and charges assessed against or imposed upon the Lessor (as well as the Lessor's attorneys' fees and costs) as a result of the Lessee's use, disposal, transportation, generation and/or sale of Hazardous Substances on the Property. The obligation of the Lessee to indemnify the Lessor pursuant to this provision is an independent obligation that survives the termination of this Lease Agreement.

**18.2.3** In the event of any default by the Lessee under this Section 18, in addition to the rights and remedies set forth elsewhere in this Lease Agreement, the Lessor shall be entitled to the following rights and remedies:

(a) At the Lessor's option, to terminate this Lease Agreement immediately; and/or

(b) To recover any and all damages associated with the default, including but not limited to cleanup costs and charges, administrative , and civil penalties and fees, loss of business and sales by the Lessee and other tenants of the Property, any and all damages and claims asserted by third parties and the Lessor's attorneys' fees and costs.

## **19. MISCELLANEOUS**

**19.1 Section Headings.** The section headings used in this Lease Agreement are for convenience only. They shall not be construed to limit or to extend the meaning of any part of this Lease Agreement.

**19.2 Amendments.** Any amendments or additions to this Lease Agreement shall be made in writing executed by the Parties, and neither the Lessor nor the Lessee shall be bound by oral or implied Agreements.

**19.3 Waiver.** The waiver by the Lessor of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition herein contained. The acceptance of rent by the Lessor following a breach by Lessee of any provision of this Lease Agreement shall not constitute a waiver of any right of the Lessor with respect to such breach. The Lessor shall be deemed to have waived any right hereunder only if the Lessor expressly does so in writing.



**19.4 Cumulative Remedies.** Each right, power and remedy of each Party provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall be cumulative and concurrent and shall be in addition to every other right, power or remedy provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by each Party of any one or more of the rights, powers or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by each Party of any or all such other rights, powers or remedies.

**19.5 Consent.** In determining the reasonableness of any consent, approval or action by the Lessor hereunder, the Lessee acknowledges that the Lessor is acting as a trustee of public lands and must observe a fiduciary duty in prudently managing the Property in a manner which maximizes the long-term benefit derived there from and which minimizes the risk incurred in connection therewith.

**19.6 Time of Essence.** Time is expressly declared to be of the essence of this Lease Agreement and each and every covenant of Lessee hereunder.

**19.7 Expense Reimbursement.** In the event the Lessor pays any sum or incurs any expense, which the Lessee is obligated to pay hereunder, or which is made on behalf of the Lessee, the Lessor shall be entitled to receive reimbursement thereof from the Lessee upon demand, together with interest thereon from the date of expenditure at the rate of nine percent (9%) per annum.

**19.8 Language.** The word "Lessee" when used herein, shall be applicable to one (1) or more persons, as the case may be, and the singular shall include the plural, and the neuter shall include the masculine and feminine, and if there be more than one (1), the obligations hereof shall be joint and several. The words "persons" whenever used shall include individuals, firms, associations and corporations. The Lessor and the Lessee have freely negotiated this Lease Agreement and its terms. The language in all parts of this Lease Agreement shall in all cases be construed as a whole and in accordance with its fair meaning, and shall be construed in accordance with Montana law under Section 28-3-206, MCA.

**19.9 Invalidity.** If any provision of this Lease Agreement shall prove to be invalid, void or illegal, it shall in no way affect, impair or invalidate any other provision hereof.

**19.10 Provisions Independent.** Unless otherwise specifically indicated, all provisions set forth in this Lease Agreement are independent of one another, and the obligations or duty of either Party under any one provision is not dependent upon either Party performing under the terms of any other provision.

**19.11 Recordation.** A Memorandum of Lease shall be promptly recorded by Lessee in the county in which the Property is located. The Lessee shall provide the Lessor with a true copy of the recorded document, showing the date of recordation and file number. Prior to recordation, the Parties shall execute and acknowledge a Notice of Termination of the Lease, which shall be delivered to and held by the Lessor. The Lessor shall be authorized to record the Notice of Termination of the Lease upon the termination of this Lease Agreement.

**19.12 Notices.** Any notice to be given or other document to be delivered by one party to the other shall be in writing and served by personal service or by depositing same in the United States Mail, postage prepaid, return receipt requested and addressed as follows: If to the Lessor: Department of Natural Resources and Conservation, REMB, 1601 Eleventh Avenue, PO BOX 201601, Helena, MT 59620-1601. If to the Lessee: Coyote Wind, LLC, 522 SW Fifth Avenue, Suite 1230, Portland, OR 97209. Any Party may change its address for purposes of this paragraph by giving written notice of the change to the other Party in the manner provided in this paragraph.

**19.13 Integration.** This Lease Agreement, together with the Exhibits appended hereto, embodies the whole Lease Agreement of the Parties. There are no other Agreements or terms, oral or written. This document superseded all previous communications, representations and Agreements, oral or written, between the Parties.

**19.14 Legal Matters.**

**19.14.1 Applicable Law.** This Lease shall be subject to, interpreted, and construed under and pursuant to the laws of the State of Montana as may be amended from time to time. Any reference to a statute enacted by the State of Montana shall refer to that statute as presently enacted and any subsequent amendments thereto, unless the reference to said statute specifically provides otherwise.

**19.14.2 Litigation Venue.** In the event of litigation concerning this Lease Agreement, venue shall be in the First Judicial District in and for the County of Lewis and Clark, Montana.

**19.14.3 Issues Subject to Administrative Hearing.** Any controversy which shall arise between the Lessor and the Lessee regarding the provisions hereof relating to the amount of insurance to be maintained by Lessee, the allocation of any condemnation award, the degree of damage or destruction suffered by the Property or any matter specifically made subject to administrative hearing in this Lease Agreement shall be resolved by an administrative contested case hearing before the Lessor under the Montana Administrative Procedures Act.

**19.15 Extent.** All covenants and Agreements herein set forth between the parties hereto shall extend to and bind their successors, assigns and legal representatives.

**19.16 Lessor's Authority.** The Lessor is the sole owner of the Property and has the unrestricted right and authority to sign this Lease Agreement and to grant the Lessee the rights granted in this Lease Agreement. When signed by both Parties, this Lease Agreement constitutes a valid and binding Agreement enforceable in accordance with its terms.

**IN WITNESS WHEREOF**, the Lessor and the Lessee have caused this Lease Agreement to be executed in duplicate and the Area Manager of the Central Land Office of the Department of Natural Resources and Conservation, pursuant to the authority granted him by the Board of Land Commissioners of the State of Montana, has hereunto set his hand and affixed the seal of the Board of Land Commissioners this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Lessor:

**Montana Department of Natural Resources and Conservation**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Lessee:

**COYOTE WIND, LLC,  
a Montana limited liability company**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF MONTANA

)

COUNTY OF ) ss.  
)

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_ to me known to be the of the Department of Natural Resources and Conservation of the State of Montana, the Department that executed the within and foregoing instrument on behalf of the State of Montana, and acknowledged said instrument to be the free and voluntary act and deed of the State of Montana for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the official seal of Lessor of the Department of Natural Resources and Conservation for the State of Montana

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
Notary Public in and for the State of Montana  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

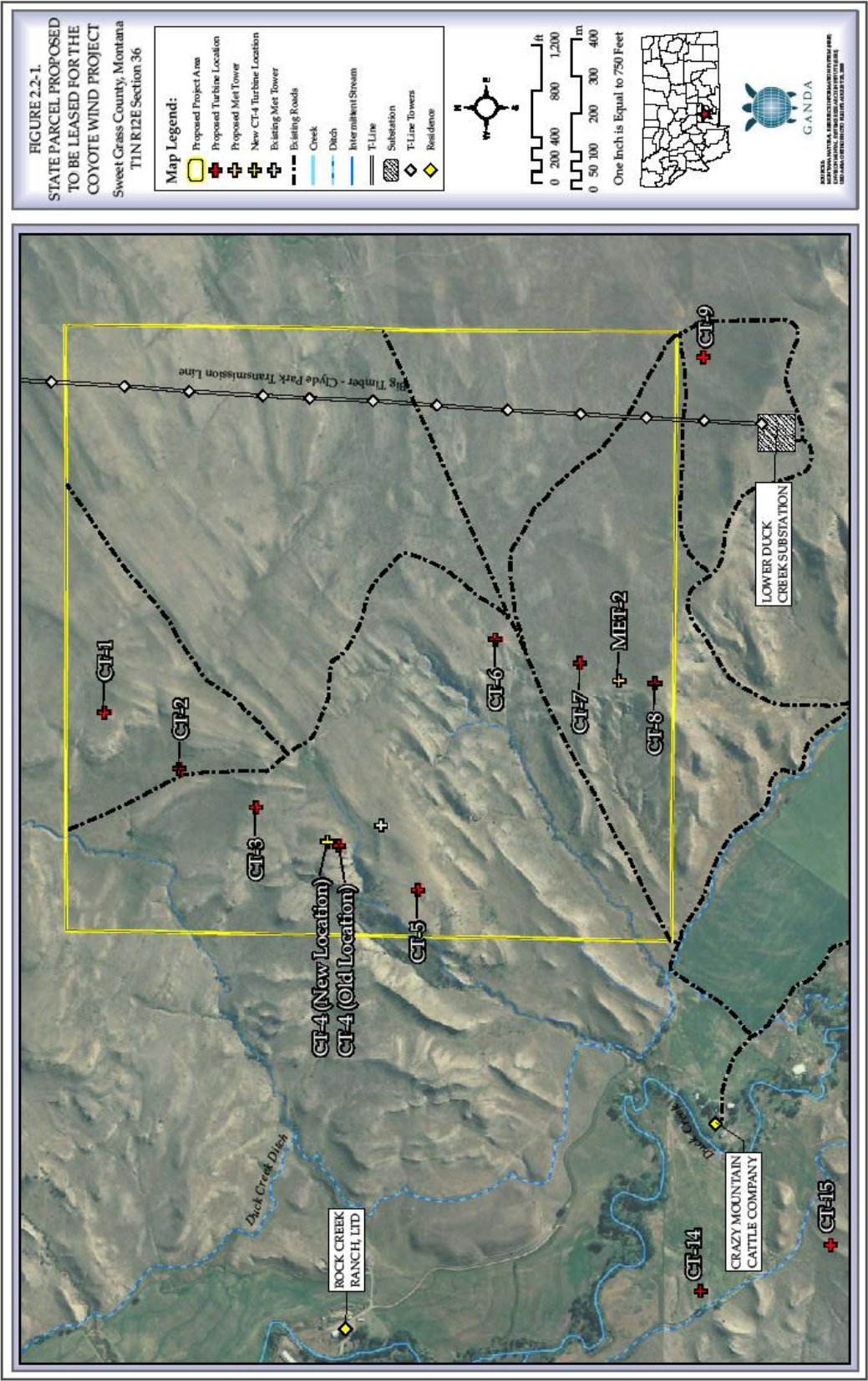
STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2009 by \_\_\_\_\_, as \_\_\_\_\_ of COYOTE WIND, LLC, a Montana limited liability company, on its behalf.

\_\_\_\_\_  
Notary Public for Oregon  
My commission expires: \_\_\_\_\_  
Commission No.: \_\_\_\_\_

**EXHIBIT A**

**PRELIMINARY SITE PLAN**



## **EXHIBIT B**

### **RECLAMATION AND DECOMMISSIONING PLAN**

Reclamation Plan Requirements for Subsequent Use: Rangeland  
(Specifications may vary by site and location)

All topsoil removed for the construction of roads and leasehold improvements will be stockpiled on the Property in a location where it will not be disturbed. Stockpiled topsoil shall be spread no deeper than four (4) feet deep (in low berms) reseeded, and planted to establish growth of native grasses.

Reclamation will occur after construction of Project Improvements, upon completion of repairs, at removal of improvements, and at decommissioning.

All equipment used for reclamation will be power washed prior to entry to state land.

1. Remove Project Improvements no longer in use, any garbage, equipment, any oil spilled, asphalt, etc. Underground structures will be removed to three feet below restored grade level. Underground structures below 1 meter may be left in place. All electrical lines must be removed.
2. Reclaim all disturbed areas, all associated roads and all disturbed slopes.
3. Return all slopes to a 3:1 slope maximum.
4. After slopes have been returned, a minimum 6" of topsoil comprised of stockpiled native topsoil will be placed on the slope and all disturbed areas. Additional weed free topsoil may need to be acquired from another location to assure an adequate seed bed.
5. The topsoil will be compressed after placement.
6. The disturbed area will be seeded using the following seed mix and application rate; western wheatgrass 4 lb / ac, thick spike wheatgrass 4 lb / ac, slender wheatgrass 5 lb / ac, bluebunch wheatgrass 6lb / ac, flax 1lb / ac, and green needle grass 5/lb / ac. Only certified pure live seed will be used. Hydromulch will be applied to all seeded areas for fertilization and to prevent wind erosion.
7. All seeding must be completed between March 1 and May 1 or between October 1 and November 15 to ensure sufficient soil moisture for seedling establishment. The Lessor will inspect the site after two years to determine if seedlings have been sufficiently established. If seedlings have not adequately established Lessee will reseed and fertilize as deemed necessary by Lessor.
8. Upon completion of final reclamation, a joint inspection by the Lessor and the Lessee of the reclaimed site will be scheduled. During or shortly after joint inspection, the Lessor will either accept the reclamation as meeting the criteria established in this Exhibit, or identify corrections to the reclamation. If the reclamation is accepted by the Lessor, the

Lessor will release any reclamation bond that serves to guarantee that such reclamation occurs. If the Lessor identifies corrections to the reclamation, the Lessee shall be given a reasonable amount of time to make such corrections. Upon completion of any such corrections, a joint inspection by the Lessor and the Lessee will be scheduled, at which time the reclamation will either be accepted or further corrections identified. Such process shall occur until the reclamation is fully accepted by the Lessor. The Lessee will monitor and control noxious weeds for three years following reclamation of disturbed areas.

## **EXHIBIT C**

### **STIPULATIONS REGARDING AVIAN, BATS, AND BEST MANAGEMENT PRACTICES**

The Lessee shall comply with the Avian and Bat Post Construction Monitoring Plan – Coyote Wind Project Draft EIS, Appendix F. This Plan shall include a Technical Advisory Committee consisting of, at a minimum, the United States Fish & Wildlife Service, Montana Fish, Wildlife & Parks, MTDNRC, and the Lessee. The TAC will provide a forum for reviewing monitoring plans and data, facilitate collaboration among project stakeholders, make recommendations on the study protocol as well as changes to monitoring or mitigation, and address impacts that were unforeseen in the environmental impact studies, or that exceed expected impacts. This committee will be in place during for at least two years during the post mortality surveys. The Montana Audubon Society will be offered inclusion within the Technical Advisory Committee

The Lessee shall install insulators on all power poles to prevent avian electrocution.

The Lessee shall comply with the best management practices described in the Environmental Assessment / Environmental Impact Statement.